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FISCAL IMPACT REPORT

ORIGINAL DATE 2/17/07

SPONSOR Bandy LAST UPDATED 3/01/07 HB 925/aHENRC

SHORT TITLE Title Insurance Info on Mineral Leases SB _____

ANALYST Wilson

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Energy, Minerals & Natural Resources (EMNRD)

Public Regulation Commission (PRC)

SUMMARY

Synopsis of HENRC Amendment

The House Energy & Natural Resources amendment adds the requirement that binders must also contain information as to the existence of mineral leases.

Synopsis of Original Bill

House Bill 925 will require all title insurance policies issued in New Mexico to include copies of all recorded oil, gas and mineral leases relating to the insured property. It will require each title policy to contain a statement that no other recorded mineral lease documents exist and furthermore that the title policy does not insure mineral rights.

FISCAL IMPLICATIONS

There is no fiscal impact.

SIGNIFICANT ISSUES

The PRC noted title insurance policies in New Mexico do not insure mineral rights, whether

owned or leased. This bill will therefore require title agents to incur additional work that does not pertain to their duty under 59A-30-11 to determine the insurability of a title. Furthermore, recorded mineral lease documentation can be extremely voluminous and complex and often involves searching the records of the State Land Office in Santa Fe and the U.S. Bureau of Land Management as well as of the County in which the property is located.

The time and expense involved in performing many title searches and examinations will increase substantially, leading to increased title premiums and lengthened real estate closings. It will also greatly increase title agents' and insurers' legal exposure to errors and omissions in their title searches.

EMNRD provided the following:

Under New Mexico law, an owner of oil, gas or other minerals has the right to use so much of the surface of the land as may be reasonably necessary to produce the minerals, even if someone else owns the surface. The owner of the surface cannot exclude the mineral owner or prevent it from using the surface for oil, gas or mineral operations. Presumably this bill is designed to provide disclosure of oil, gas and mineral leases to a surface purchaser so that the purchaser will know that his or her title is subject to those rights.

Recently, State Parks Division (SPD) negotiated surface use agreements with two separate oil and gas operations after SPD purchased the surface estate. Although SPD was aware of separate mineral interests to the property, it did not have copies of the leases. HB 295 will help by providing copies of the leases to holders of title policies.

The bill, however, will provide incomplete, and, in some cases possibly provide buyers with unreliable assurances that the lack of mineral leases signifies the property is free of any mineral claims. A sophisticated purchaser with access to legal counsel will know how to determine from the exceptions noted on existing title insurance forms that someone else may own mineral rights and may have rights to use the surface for mining or drilling. An unsophisticated purchaser may be misled by the statement that there are no leases recorded affecting the property, not realizing that the owners of the minerals have the right to use the surface for mineral development themselves even if the minerals are not leased, or to make future leases to third parties without the knowledge or consent of the purchaser of the surface. Furthermore, having copies of existing leases will not necessarily tell the surface purchaser what rights the lessees have to use the surface. Some mineral leases contain specific provisions with respect to surface use, but many do not, and the absence of such provisions does not mean that the lessees do not have surface rights.

While the bill, by providing a surface purchaser with copies of existing oil, gas and mineral leases, may make it easier for the surface owner to discover who has rights to use the property for drilling or mining, it will not directly provide them with that information. Mineral leases are frequently assigned, and the bill does not require the title insurance companies to furnish copies of lease assignments. So it will require additional research to discover who has rights to the property. Furthermore, the leases existing at the time of the surface owner's purchase may expire, and the mineral owners may make new leases to other parties, before the issue of surface access arises.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill relates to HB 827 in that both deal with "split estates;" that is situations where surface and mineral interests in the same land are owned by different owners. HB 827 regulates the terms on which an owner of oil and gas right may use the surface. HB 925 requires title insurers to make certain disclosures regarding oil, gas and mineral ownership and leases to purchasers of the surface.

DW/nt